

JAN 15 1976

MICHAEL RODAK, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term 1975

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No. 75-851

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ROY BOMBARD, Superintendent, Greenhaven  
Correctional Facility,

Petitioner,

- against -

LEON WASHINGTON,

Respondent.

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RESPONDENT'S BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI

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Patrick M. Wall  
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(212) 986-6688

Counsel to Respondent

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I INTRODUCTION

Petitioner seeks the issuance of a Writ of Certiorari to the United States Court of Appeals for the Second Circuit. The factual background of this case is adequately set forth in the various opinions annexed to the Petition as exhibits. Respondent sets forth herein the

reasons why the Writ should not issue.

II ARGUMENT

It is undisputed that, during Respondent's state murder trial, the prosecutor knowingly permitted one of his principal witnesses to commit uncorrected perjury with respect to the promises which had induced him to testify. It is also undisputed that this witness, Martin Anderson, gave crucial testimony against Respondent. As the Second Circuit noted (Petition, p. 22):

Anderson . . . delivered the coup de grace, unequivocally placing Washington at the scene of the crime with the murder weapon in his pocket, the robbery proceeds in his hands, and a confession in his mouth.

Finally, it is undisputed that, before Anderson perjured himself, he told Respondent of the prosecutorial promise made to him, and Respondent told his trial counsel what Anderson had told him. And it is upon that sole fact that Petitioner, having misconstrued its meaning, asks this Court to reinstate a sentence of life imprisonment.

We respectfully submit that a reading of the decision of the Court below and the exercise of some common

sense will demonstrate that Petitioner has misconstrued not only the facts but what the Second Circuit found those facts to be, and has therefore presented to this Court an "issue" not actually present.

Petitioner asserts (Petition, p. 6) that Respondent and his counsel had "advance knowledge" of the bargain which Anderson perjurally denied. Relying upon a host of cases which hold that a defendant may not complain of the prosecutorial suppression of evidence known to him, Petitioner claims that the Second Circuit's decision, granting Respondent the relief requested, is "completely contrary" to decisions of the other Circuit Courts in "similar cases" (Petition, p. 6). This claim is belied by the words of the very decision which Petitioner asks this Court to review.

With respect to the claim that Respondent "knew" that Anderson's denial of a prosecutorial promise was perjurious, the Second Circuit, distinguishing the Green case upon which Petitioner so heavily relies, clearly stated (Petition, p. 23, n. 9) that:

. . . Washington had not overheard the actual conversation between [prosecutor] Levine and Anderson, and thus could not know that Anderson was engaging in anything more than "jailhouse talk."  
(Emphasis in original.)

With respect to the assertion that Respondent should not be allowed to profit from the perjury against him, since he was in a position effectively to do something about it, the Second Circuit stated (Petition, p. 23, n. 9) that:

The harm in the present case was caused not so much by unawareness that Anderson's testimony may have been perjured as by inability to respond effectively in view of [prosecutor] Levine's silence.

The cases upon which Petitioner relies all deal with situations where defendant or his counsel had the tools to do the job of uncovering the perjury and setting the matter straight. That is not this case.

The facts are quite clear and do not justify the further attention of this Court, except by the denial of the Petition. In a murder trial, a crucial prosecution witness perjured himself with respect to matters affecting his credibility. The prosecutor, knowing of the perjury, sat silent. Defense counsel, believing (naively, it now appears) that, by virtue of professional ethics, the prosecutor's silence was an imprimatur upon the testimony, did not press the matter further. Respondent was convicted and sentenced to life in prison.

There is little more to say. The proposition that

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a conviction so obtained may not lawfully stand is assuredly not debated among the Circuits, despite Petitioner's attempt to create a romantic petition-granting aura around a squalid set of facts. The shrift given to the issue so speciously raised should be short.

III CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

Respectfully submitted,

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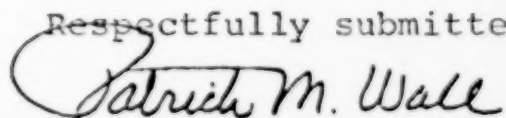
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